

1 Peter Obstler/SBN 171623
2 pobstler@bgrfirm.com
3 Eric M. George/SBN 166403
4 egeorge@bgrfirm.com
5 Dennis Ellis/SBN 178196
6 dellis@bgrfirm.com
7 Debi A. Ramos/SBN 135373
8 dramos@bgrfirm.com
9 BROWNE GEORGE ROSS
10 O'BRIEN ANNAGUEY & ELLIS LLP
11 2121 Avenue of the Stars, Suite 2800
12 Los Angeles, CA 90067
13 310-274-7100; Facsimile: 310-275-5697
14
15 Attorneys for Plaintiffs Kimberly Carleste
16 Newman, Lisa Cabrera, Catherine Jones,
17 Denotra Nicole Lewis, Andrew Hepkins,
18 Harvey Stubbs, Khalif Muhammad, Keu
19 Reyes, and Osiris Ley

20 David H. Kramer/SBN 168452
21 dkramer@wsgr.com
22 Lauren Gallo White/SBN 309075
23 lwhite@wsgr.com
24 Kelly M. Knoll/SBN 305579
25 kknoll@wsgr.com
26 WILSON SONSINI GOODRICH & ROSATI
27 Professional Corporation
28 650 Page Mill Road
Palo Alto, CA 94304-1050
650-493-9300; Facsimile: 650-565-5100

Brian M. Willen (Admitted *Pro Hac Vice*)
bwillen@wsgr.com
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022
212-999-5800; Facsimile: 212-999-5801

Attorneys for Defendants Google LLC and
YouTube LLC

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

15 Kimberly Carleste Newman, Lisa Cabrera,
16 Catherine Jones, Denotra Nicole Lewis,
17 Andrew Hepkins, Harvey Stubbs, Khalif
18 Muhammad, Keu Reyes and Osiris Ley,

19 Plaintiffs,

20 vs.

21 Google LLC, YouTube LLC, Alphabet, Inc.
22 and Does 1 through 100, inclusive,

23 Defendants.

24 Case No. 5:20-cv-04011-LHK

25 **AMENDED JOINT CASE
MANAGEMENT STATEMENT &
[PROPOSED] ORDER**

26 Judge: Hon. Lucy H. Koh
27 Date: July 28, 2021
28 Time: 2:00 p.m.
Crtrm.: 8

1 The parties to the above-entitled action respectfully submit this Amended Joint Case
 2 Management Statement & Proposed Order pursuant to the Court's Order dated July 1, 2021 (Dkt.
 3 70), the Standing Order for All Judges of the Northern District of California, and Civil Local Rule
 4 of Court 16-9.

5 **1. Jurisdiction & Service**

6 *The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether
 any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties
 remain to be served, a proposed deadline for service.*

7
 8 a. The parties agree that jurisdiction over Plaintiffs' federal causes of action in the Second
 9 Amended Complaint ("SAC") arose under 28 U.S.C. §§ 1331, 1337(a), and 2201.

10 **Plaintiffs' Statement:** Federal jurisdiction also arises under the Class Action Fairness Act, 28
 11 U.S.C. § 1332(d) (CAFA) because this lawsuit is representative action with at least 100 class
 12 members and "minimal diversity" exists between the parties because the citizenship of one or
 13 more the class members is different from that of any defendant and the aggregate amount in
 14 controversy exceeds \$5 million.

15 **Defendants' Statement:** Defendants do not agree that the SAC established that 28 U.S.C.
 16 § 1332(d) was an independent basis for jurisdiction in this case.

17 b. No issues exist regarding personal jurisdiction or venue, and no parties remain to be served.

18 **2. Facts**

19 *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

20 **Plaintiffs' Statement:**

21 a. On June 16, 2020, Plaintiffs commenced this action on behalf of themselves individually and a
 22 putative class of similarly situated users of the global social media platform YouTube.
 23 b. Beginning at least sometime in 2016, and possibly earlier, and continuing through the present,
 24 Defendants have racially discriminated under contract, violate their own contractual promises,
 25 terms of service, and license agreements that date back to 2006, have unlawfully converted or
 26 failed to account and pay money due and owing Plaintiffs for intellectual property, and have
 27 engaged in unlawful business practices and false advertising. In 2017, Defendants admitted that
 28 they were unlawfully "targeting" Plaintiffs and other users by using race and other personal

1 identity classifications to filter and block Plaintiffs' access to advertising, monetization, and other
 2 services on YouTube in violation of contractual promises and state and federal laws. In addition
 3 to these and other admissions by Defendants, Defendants have been caught using algorithms,
 4 computer based tools, artificial intelligence, and other practices to filter, restrict, exclude, and/or
 5 block Plaintiffs' video content, channels, and access to services on YouTube based on race or
 6 identity, rather than on video material or content, in direct violation of Defendants' promise and
 7 statutory obligations to provide equal access to YouTube under neutral content based rules and
 8 guidelines that apply equally to all users regardless of their race, gender, sexual orientation,
 9 religion, political identity, or other trait. Furthermore, beginning at least in 2020, Defendants
 10 unilaterally and with no basis or notice to Plaintiffs, began to change, manipulate, and reduce the
 11 view numbers and total view times of Plaintiffs' videos and channels, as well as those of tens of
 12 millions of other YouTube users.

13 c. Defendants' conduct has caused and resulted in substantial financial and other harms, including
 14 lost revenue and income, harm to license and other property rights, conversion of Plaintiffs'
 15 property, and failure to account for and pay monetary and other valuable forms of consideration
 16 due and owing Plaintiffs and other YouTubers. Defendants also continue to harm Plaintiffs and
 17 other similarly situated YouTubers by withholding, converting, and failing to pay revenues
 18 already earned, after Defendants removed videos or channels from the platform. Finally,
 19 Defendants have converted and deprived Plaintiffs of the use and fair value of their intellectual
 20 property, video content, and data by archiving and removing many of Plaintiffs' videos and
 21 channels, without notice, and in many cases depriving Plaintiffs of any further access to their
 22 property, including original video content and material.

23 d. At this time, the core factual issues on which Plaintiffs base their claims include:
 24 d.(i) Are Defendants considering or using Plaintiffs' race, gender, sexual orientation, identity, or
 25 viewpoints in any manner to filter, restrict, regulate, block, or affect on YouTube or access to
 26 services on the platform?

27
 28

1 d.(ii) Are Defendants filtering, restricting, blocking or otherwise affecting a user's content or
 2 access to YouTube in violation of YouTube's terms of service, license agreements, and other
 3 guidelines and promises to users?

4 d.(iii) Are Defendants falsely representing to the market of YouTube users, viewers, subscribers
 5 and advertisers that Plaintiffs' videos contain material or content that is inappropriate, offensive,
 6 or otherwise violates YouTube's guidelines and rules?

7 d.(iv) Have Defendants manipulated viewing, advertising data, or other data or otherwise failed to
 8 account for monetary or other consideration due and owing to third party users?

9 d.(v) Have Defendants converted or otherwise deprived users of their property or intellectual
 10 property rights that arise from video content, data, or other property of users?

11 **Defendants' Statement:**

12 YouTube is a popular online service for sharing videos and related content. YouTube
 13 allows creators whose YouTube channels meet certain requirements to earn revenue from (or
 14 "monetize") their videos. The use of YouTube is governed by rules and policies that make clear
 15 that certain kinds of content—including harassment, hate speech, and other harmful or dangerous
 16 content—are not allowed and that YouTube has discretion to remove unwanted material from its
 17 service. *See SAC ¶¶ 7 n.2, 75, 85, 349, 472.* YouTube also offers a feature called Restricted
 18 Mode, an optional, opt-in setting that a small minority of users select to screen out content
 19 flagged as age-restricted or potentially adult. *Id.* ¶¶ 135-137.

20 Plaintiffs are individuals who identify as African American, Puerto Rican, or Mexican
 21 American and claim to have hosted their videos on YouTube over a period of more than five
 22 years. *Id.* ¶¶ 18-26. Plaintiffs' content includes videos titled "CANDACE OWENS IS A 'COON
 23 ARTIST'" and "What I Don't Like About Mexicans...", as well as videos depicting gory and
 24 simulated violence. *Id.* ¶¶ 18-26, 338, 340. No Plaintiff alleges that they are currently prohibited
 25 from uploading content to YouTube or from operating channels on YouTube's general service
 26 (that is, without Restricted Mode turned on). Plaintiffs' allegations are far more limited: they
 27 claim that YouTube removed (or failed to restore) a fraction of their videos, excluded some (but
 28 not all) of their videos from Restricted Mode, deemed some (but not all) of their videos

1 inappropriate for advertising (or “demonetized” them), and took other actions that allegedly
 2 made it harder for viewers to find or access their videos and channels. Plaintiffs have attempted
 3 to pile up these alleged actions, all of which are contractually permitted, and weave them into a
 4 vaguely defined attack against Defendants.

5 For example, Plaintiffs contend that YouTube’s algorithms “target” Plaintiffs or flag
 6 videos on the YouTube platform based on race. But nothing in the SAC or Plaintiffs’ supporting
 7 documents plausibly suggests that YouTube or its algorithms consider race in any way to restrict
 8 or demonetize users’ content. In other words, Plaintiffs’ factual allegations are based, at best, on
 9 their own guesses about the reasons their videos were restricted or demonetized. As explained
 10 further in Defendants’ Motion to Dismiss the SAC, these allegations fail to state a claim for
 11 relief even if accepted as true. But they are false. None of the Plaintiffs or their content has been
 12 “targeted” or treated differently because of their race or ethnicity. Plaintiffs’ allegations do not
 13 reflect how YouTube actually operates, and while Plaintiffs may disagree with YouTube’s
 14 decisions about how to apply and enforce its content-based rules governing user content and
 15 access to its platform, they are simply wrong to conflate those disagreements with racial or
 16 ethnic discrimination. YouTube is committed to the cause of racial justice and anti-racism, and it
 17 works to eradicate it, not to perpetuate it.

18 **3. Legal Issues**

19 *A brief statement, without extended legal argument, of the disputed points of law, including reference to specific
 statutes and decisions.*

20 The parties met and conferred following the Court’s June 25, 2021 Ruling and Order
 21 Granting Defendants’ Motion to Dismiss With Leave to Amend (Dkt. No. 68). The parties have
 22 agreed to move forward with this dispute. Plaintiffs have requested additional time to prepare and
 23 file the Third Amended Complaint and a briefing schedule that is coordinated with the briefing
 24 schedule for *Divino Group LLC v. Google LLC*, No. 5:19-cv-04749-VKD, and the anticipated
 25 briefing schedule in the appeal by Prager University in *Prager University v. Google LLC*, No.
 26 CV340667. Defendants will respond to the Third Amended Complaint and intend to move for its
 27 dismissal.

28

1 4. Motions2 *All prior and pending motions, their current status, and any anticipated motions.*3 a. *Prior motions:*4 a.(i) The United States Government filed a Motion to Intervene, which was granted on February
5 9, 2021 (Dkt. 49);6 a.(ii) Defendants filed a Motion to Dismiss the SAC (Dkt. 29), which was granted on June 25,
7 2021 (Dkt. 68);8 a.(iii) Plaintiffs filed a Motion to Strike Defendants' Motion to Dismiss (Dkt. 39), which was
9 denied on June 25, 2021 (Dkt. 68);10 a.(iv) Defendants filed an Administrative Motion for Leave to File Response to Plaintiffs' March
11 29, 2021 Submission (Dkt. 56), which was denied as moot on June 25, 2021 (Dkt. 68).12 b. *Anticipated Motions:*13 **Both parties:** After meeting and conferring at length, subject to the Court's approval, the Parties
14 have agreed as follows: (i) Plaintiffs shall file their Third Amended Complaint on or before
15 October 5, 2021; (ii) Defendants shall file their response to the Third Amended Complaint,
16 including any Motion to Dismiss, on or before November 1, 2021; (iii) Plaintiffs shall file any
17 Opposition papers on or before November 22, 2021; and (iv) Defendants shall file any Reply
18 papers on or before December 14, 2021.19 Thereafter, if this case proceeds, Plaintiffs and Defendants likely will file cross-motions for
20 summary adjudication/judgment.21 **Plaintiffs' Statement:** Plaintiffs intend to file a motion to certify a class of similarly situated
22 YouTube users. Furthermore, in the event that Plaintiffs and Defendants are unable to reach an
23 agreement on preserving the status quo, Plaintiffs may decide to file an application for Preliminary
24 Injunction (1) to prevent Defendants from further intentional breaches of the contract; (2) to
25 prevent Defendants from further unilaterally amending or changing the contract; (3) to require
26 Defendants to equally enforce the Community Guidelines and Terms of Service in response to
27 flags and complaints made by members of the class; and (4) to prohibit Defendants from
28 demonetizing, issuing warnings and/or strikes or removing videos and channels of the members of

1 the class without first demonstrating that specific content posted constitutes a violation of the
 2 contract.

3 **Defendants' Statement:** Defendants would oppose any application for Preliminary Injunction.
 4 Defendants do not currently contemplate filing other motions, but they reserve the right to do so.

5 **5. Amendment of Pleadings**

6 *The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for
 amending the pleadings.*

7 **Plaintiffs' Statement:**

8 To accommodate the parties' briefing schedule for Defendants' Motion to Dismiss in
 9 *Divino Group LLC v. Google LLC*, No. 5:19-cv-04749-VKD, and the anticipated
 10 contemporaneous briefing schedule in the appeal by Prager University in *Prager University v.*
 11 *Google LLC*, No. CV340667, Plaintiffs are requesting additional time to file a Third Amended
 12 Complaint, through October 5, 2021. The Third Amended Complaint will: (i) identify additional
 13 specific Plaintiffs who are protected from discrimination under 42 U.S.C. § 1981(b) and the Unruh
 14 Civil Rights Act, Cal. Civ. Code §§51 *et seq.*, and/or are members of the putative class for which
 15 certification is sought; (ii) plead additional factual allegations of race discrimination and unlawful
 16 conduct that occurred or were discovered after the filing of the Second Amended Complaint (the
 17 "SAC") on September 21, 2020 (Dkt. 27); (iii) add two claims for (a) violation of Plaintiffs'
 18 privacy rights and (b) unjust enrichment, both of which are derivative and based on the contracts
 19 and allegations already alleged in the SAC; and (iv) to the extent that the Court declines to infer
 20 federal jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) ("CAFA"), to add
 21 those jurisdictional allegations.

22 **Defendants' Statement:**

23 Defendants believe that any amendment to the Second Amended Complaint would be
 24 futile. However, subject to the Court's June 25, 2021 Order (Dkt. No. 68), Defendants do not
 25 oppose the briefing schedule as proposed by Plaintiffs above.

26 **6. Evidence Preservation**

27 *A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically
 28 Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*

1 **Plaintiffs' Statement:**

2 The parties have reviewed the ESI Guidelines, understand their respective obligations to
3 preserve all information that may lead to the discovery of evidence with respect to the subject
4 matter of the lawsuit, and have taken reasonable necessary steps to preserve that information. The
5 parties will meet and confer to confirm that they have met their obligations under Federal Rule of
6 Civil Procedure 26.

7 **Defendants' Statement:**

8 Defendants certify that they have reviewed the Guidelines Relating to the Discovery of
9 Electronically Stored Information. Defendants have taken reasonable and proportionate steps to
10 preserve evidence related to the issues presented in the action, consistent with the requirements of
11 the Federal Rules of Civil Procedure and this Court's ESI Guidelines.

12 **7. Disclosures**

13 *Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a
description of the disclosures made. For ADA and employment cases, see General Order Nos. 56 and 71.*

14 **Plaintiffs' Statement:**

15 No disclosures have been made as of the date of this submission. Plaintiffs stand ready to
16 meet and confer immediately and to agree upon a schedule regarding the deadline for making
17 disclosures and a reasonable discovery plan as provided for under Rule 26 of the Federal Rules of
18 Civil Procedure.

19 **Defendants' Statement:**

20 Defendants object to initial disclosures prior to issuance of the Court's ruling on
21 Defendants' forthcoming response to the Third Amended Complaint. Should any part of Plaintiffs'
22 case proceed past the pleadings, Defendants agree to meet and confer within two weeks of any
23 order denying Defendants' Motion to Dismiss the Third Amended Complaint to discuss and agree
24 to a reasonable discovery plan, including a date to exchange initial disclosures.

25 **8. Discovery**

26 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the
discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a
proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.*

27

28

1 a. Discovery to date: No discovery has been taken to date. The parties have not identified any
 2 discovery disputes at this time.
 3 b. Anticipated future discovery: If this case and *Divino Group LLC v. Google LLC*, No. 19-CV-
 4 04749-VKD, proceed beyond the motion-to-dismiss stage, the parties have agreed to endeavor to
 5 coordinate discovery in the two cases.

6 **Plaintiffs' Statement:** Plaintiffs intend to serve the following discovery requests:

7 a) Requests for Production of Documents and Things both with respect to class wide issues and
 8 with respect to the videos and channels of the named Plaintiffs.
 9 b) Requests for Admission in anticipation of filing a Motion for Summary
 10 Judgment/Adjudication and to narrow the factual issues to be proven at trial.
 11 c) Special Interrogatories regarding both with respect to class wide issues and with respect to the
 12 videos and channels of the named Plaintiffs.
 13 d) Deposition Notices for Defendants' employees, engineers and artificial ethics team members
 14 who have knowledge about the subject matter and allegations of the operative pleadings and other
 15 statements or information that bear on the allegations in this case.
 16 e) Third party subpoenas for testimony and documents.

17 **Defendants' Statement:** Defendants believe it is premature to discuss the full scope of discovery
 18 or a schedule for discovery before the Third Amended Complaint has been filed or Defendants
 19 have had the opportunity to respond to it, and while the pleadings are not yet settled. Should any
 20 part of Plaintiffs' case proceed past the pleadings, the parties agree to meet and confer within two
 21 weeks of any order denying Defendants' Motion to Dismiss the Third Amended Complaint to
 22 discuss and agree to a reasonable discovery plan.

23 c. Proposed limitations or modifications of discovery rules:

24 **Plaintiffs' Statement:** No limitations or modifications are agreed to nor anticipated at this time.

25 **Defendants' Statement:** Defendants believe that the default limitations on discovery set out in
 26 the Federal Rules should apply and that the parties should work together to reach agreement on a
 27 mutual expansion if one becomes necessary.

28 d. Stipulated e-discovery proposed order:

1 **Plaintiffs' Statement:** The parties will meet and confer to negotiate a stipulated proposed e-
2 discovery order. If no agreement can be reached, the Plaintiffs agree to use the standard form e-
3 discovery order.

4 **Defendants' Statement:** Defendants agree to meet and confer to reach agreement on an ESI
5 protocol to govern electronic discovery if and when discovery opens.

6 e. Stipulated protective order:

7 **Plaintiffs' Statement:** The parties will meet and confer to negotiate a stipulated proposed
8 protective order. If no agreement can be reached, the Plaintiffs agree to use the standard form
9 protective order for the U.S. District Court for the Northern District of California.

10 **Defendants' Statement:** If and when discovery opens, Defendants agree to discuss and seek to
11 reach agreement with Plaintiffs on a pretrial Protective Order to govern disclosure of personal,
12 confidential information; trade secrets; and proprietary or other confidential commercial
13 information. Defendants do not currently anticipate any issues relating to claims of privilege or
14 claims of protection as to work-product material, but they plan to include a Rule 502(d) provision
15 in their proposed Protective Order regarding any disclosure of privileged information.

16 9. **Class Actions**

17 *If a class action, a proposal for how and when the class will be certified.*

18 All attorneys of record for the parties have reviewed the Procedural Guidance for Class
19 Action Settlements.

20 **Plaintiffs' Statement:**

21 Plaintiffs intend to file a motion for class certification after merits and class discovery are
22 completed. In light of the systemic allegations and form consumer contracts at issue in this case,
23 discovery should not be bifurcated with respect to issues regarding the merits or class.

24 **Defendants' Statement:**

25 Defendants intend to oppose class certification. Defendants believe it is premature to
26 discuss the potential bifurcation of merits and class discovery at this stage of the case.

27

28

10. Related Cases

2 Any related cases or proceedings pending before another judge of this court, or before another court or
 2 administrative body.

Plaintiffs' Statement:

4 For coordination of discovery purposes only: *Divino Group LLC v. Google LLC, et al.*,
 5 No. 19-CV-04749-VKD (N.D. Cal.).¹

Defendants' Statement:

7 Defendants identify the following pending cases, which are based on the same underlying
 8 conduct at issue in this case: the removal, demonetization, or restriction of access to material on
 9 YouTube, and which involve the same Plaintiffs' counsel and many of the same claims asserted in
 10 this action, asserted against one or more of the Defendants:

- 11 - *Divino Group LLC v. Google LLC*, No. 5:19-cv-04749-VKD (N.D. Cal.) (DeMarchi, J.)
- 12 - *Prager University v. Google LLC*, No. CV340667 (Cal. Super. Ct.), *appeal filed*,
 13 No. H047714 (Cal. Ct. App.)

14 Defendants note that, while this case (like *Divino*) was initially assigned to Judge DeMarchi (*see*
 15 Dkt. 5), Plaintiffs declined magistrate judge jurisdiction in this case (*see* Dkt. 9). Defendants do
 16 not oppose Plaintiffs' proposal that the parties seek to coordinate proceedings in the two cases, but
 17 the propriety and extent of any coordination will depend on how, if at all, the two cases proceed.

11. Relief

19 All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of
 19 the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the
 20 bases on which it contends damages should be calculated if liability is established.

Plaintiffs' Statement:

- 22 a. The Complaint alleges thirteen causes of action. Plaintiffs seek injunctive relief; declaratory
 23 relief; restitutions; and compensatory, statutory and exemplary damages in an amount to be
 24 determined at trial in excess of \$5 million.
- 25 b. Defendants have not filed a Counterclaim.

27 ¹ This case does not meet the requirements for related cases under the Federal Rules of Civil
 28 Procedure, but Plaintiffs have proposed to coordinate discovery for the two cases.

1 **Defendants' Statement:**

2 Defendants do not believe that Plaintiffs are entitled to any relief in this case, and

3 Defendants seek denial of any such relief as well as dismissal of all of Plaintiffs' claims.

4 **12. Settlement and ADR**

5 *Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including which ADR process*
6 option the parties have selected and a proposed deadline, or if the parties do not agree, each party's preferred option
7 and timing, in compliance with ADR L.R. 3-5. In addition, the parties should include a description of key discovery or
8 motions necessary to position the parties to negotiate a resolution.

9 a. No ADR efforts have been made.

10 b. No ADR efforts are anticipated until after the Court rules on Defendants' Motion to Dismiss

11 the Third Amended Complaint.

12 **Plaintiffs' Statement:** Plaintiffs are amenable to mediation, but not arbitration or ENE.

13 **Defendants' Statement:** Defendants believe prospects for settlement are low given the parties' very different view of the underlying facts and the nature of the demands that Plaintiffs have made, but are open to ADR following a ruling on the forthcoming motions.

14 c. The parties have complied with ADR L.R. 3-5 and filed the required ADR certification on May 19, 2021.

15 **13. Consent to Magistrate Judge For All Purposes**

16 *Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.*

17 ____ YES NO

18 **14. Other References**

19 *Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.*

20 The parties agree that this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

21 **15. Narrowing of Issues**

22 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.*

23 **Plaintiffs' Statement:**

24 a. See Response to Item 14 above.

25

26

27

28

1 b. Prompt and efficient discovery, including disclosure by Defendants of the computer code,
2 architecture, and complete information used to filter, block, or regulate content, user access, and
3 user services on YouTube will greatly expedite the presentation of evidence at trial.
4 c. No issues have been identified for purposes of bifurcation at this time.

5 **Defendants' Statement:**

6 a. Defendants believe that, because this case is still in its initial stages, there are presently no
7 issues that can be narrowed by agreement or motion.
8 b. Defendants believe it is premature to discuss the full scope of discovery, and any potential
9 bifurcation of discovery, at this time before the Third Amended Complaint has been filed or
10 Defendants have had the opportunity to respond to it, and while the pleadings are not yet settled.
11 In the event that this case proceeds, Defendants do not agree that the disclosure of Defendants'
12 highly confidential and sensitive computer code, architecture, "complete information used to filter,
13 block, or regulate content," and other technical information is likely to be necessary or
14 appropriate.

15 16. Expedited Trial Procedure

16 *Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order 64,
17 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial
and a Joint Expedited Case Management Statement, in accordance with General Order No. 64, Attachments B and D.*

18 The parties do not believe that this action is appropriate for Expedited Trial Procedure.

19 17. Scheduling

20 *Proposed dates for completion of initial ADR session, designation of experts, discovery cutoff, hearing of dispositive
motions, pretrial conference and trial.*

21 **Both parties:** After meeting and conferring following this Court's June 25, 2021 Order (Dkt. No.
22 68), subject to the Court's approval, the parties propose the following schedule:

23 (a) The Case Management Conference currently set for July 28, 2021 at 2:00 p.m. before
24 this Court shall be continued to a date after the hearing for Defendants' Motion to Dismiss
25 the Third Amended Complaint;
26 (b) Plaintiffs shall file their Third Amended Complaint on or before October 5, 2021;

- (c) Defendants shall file their response to the Third Amended Complaint, including any Motion to Dismiss, on or before November 1, 2021;
- (d) Plaintiffs shall file any Opposition papers on or before November 22, 2021; and
- (e) Defendants shall file any Reply papers on or before December 14, 2021.

Plaintiffs' Statement:

Following the Court's Ruling on Defendants' Motion to Dismiss the Third Amended Complaint, the parties shall meet and confer regarding a discovery schedule. In the event that the parties cannot reach an agreement on a discovery schedule, Plaintiffs propose the following deadlines:

- 10 a. Completion of initial ADR session -- 105 days following the Case Management Conference.
- 11 b. Completion of initial disclosures – 75 days following the Case Management Conference.
- 12 c. Designation of experts – 300 days following the Case Management Conference.
- 13 d. Discovery cutoff – 360 days following the Case Management Conference.
- 14 e. Dispositive motions -- 390 days following the Case Management Conference.
- 15 f. Pretrial conference – 450 days following the Case Management Conference.
- 16 g. Trial – 470 days following the Case Management Conference.

Defendants' Statement:

18 Defendants do not agree to a discovery schedule at this time. Defendants believe that it is
19 premature to establish dates for designation of experts, discovery cutoff, hearing of further
20 dispositive motions (beyond Defendants' forthcoming Motion to Dismiss the Third Amended
21 Complaint), pretrial conference, and trial. Should any part of Plaintiffs' case proceed past the
22 pleadings, the parties agree to meet and confer within two weeks of any order denying
23 Defendants' Motion to Dismiss the Third Amended Complaint to discuss a reasonable discovery
24 plan, including a date to exchange initial disclosures.

18. Trial

Whether the case will be tried to a jury or to the court and the expected length of the trial.

Plaintiffs' Statement:

Plaintiffs have requested a trial by jury for those claims to be tried by a jury.

1 **Defendants' Statement:**

2 Plaintiffs have requested a jury trial. Defendants believe it is premature to formulate a view
3 concerning the expected length of any trial in the event that this case proceeds beyond the motion-
4 to-dismiss phase.

5 **19. Disclosure of Non-party Interested Entities or Persons**

6 *Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15.*
7 *In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.*

8
9 **Plaintiffs' Statement:**

10 Plaintiffs filed the "Certification of Interested Entities or Persons" required by Civil Local
11 Rule 3-15 on May 18, 2021.

12 Pursuant to Civil L.R. 3-15, Plaintiffs certify that other than the named parties, no other
13 person, firm, partnership, corporation or other entities known by the Plaintiffs has either (i) a
14 financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any
15 other kind of interest that could be substantially affected by the outcome of the proceeding.

16 **Defendants' Statement:**

17 Defendants filed their Corporate Disclosure Statement and Certification of Interested
18 Entities or Persons on July 9, 2020. *See* Dkt. 15. Pursuant to Federal Rule of Civil Procedure 7.1,
19 Google LLC and YouTube, LLC disclose the following:

- 20 1. Alphabet Inc. is a publicly traded company; no publicly traded company holds more
21 than 10% of Alphabet Inc.'s stock.
- 22 2. Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet
23 Inc.
- 24 3. YouTube, LLC is a subsidiary of Google LLC.

25 Pursuant to Civil L.R. 3-15, the undersigned counsel for Defendants certifies that the
26 following listed persons, associations of persons, firms, partnerships, corporations (including
27 parent corporations) or other entities (i) have a financial interest in the subject matter in
28

1 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject
2 matter or in a party that could be substantially affected by the outcome of this proceeding:

- 3 1. YouTube, LLC
- 4 2. Google LLC
- 5 3. XXVI Holdings Inc., Holding Company of Google LLC
- 6 4. Alphabet Inc., Holding Company of XXVI Holdings Inc.

7 **20. Professional Conduct**

8 *Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the
Northern District of California.*

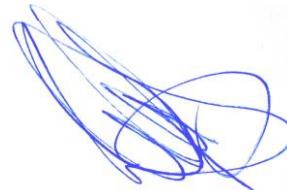
9 The attorneys for the parties have reviewed the Guidelines for Professional Conduct for the
10 Northern District of California.

11 **21. Other**

12 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

13 The parties are not presently aware of any other matters that would facilitate the just,
14 speedy, and inexpensive resolution of this action.

15
16 Dated: July 21, 2021



17
18
19 Debi Ramos Counsel for Plaintiffs

20
21 Dated: July 21, 2021 /s/ *Brian M. Willen*

22 Brian Willen Counsel for Defendants

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

Kimberly Carleste Newman, Lisa Cabrera,
Catherine Jones, Denotra Nicole Lewis,
Andrew Hepkins, Harvey Stubbs, Khalif
Muhammad, Keu Reyes and Osiris Ley,

Plaintiffs,

vs.

Google LLC, YouTube LLC, Alphabet Inc.
and Does 1 through 100, inclusive,

Defendants.

Case No. 5:20-cv-04011-LHK

[PROPOSED] SCHEDULING ORDER

(Filed Concurrently with the Joint Amended
Case Management Report)

Judge: Hon. Lucy H. Koh

Trial Date: None Set

1 Having considered the Joint Amended Case Management Report and the Parties' requested
2 schedule for Plaintiffs to file the further amended Complaint, and their requested briefing schedule
3 for Defendants' Motion to Dismiss, all papers on file and good cause appearing therefore,

4 **IT IS HEREBY ORDERED:**

5 (1) The Case Management Conference currently set for July 28, 2021 at 2:00 p.m. before
6 this Court shall be continued;

7 (2) Plaintiffs shall file their Third Amended Complaint on or before October 5, 2021;

8 (3) Defendants shall file their response to the Third Amended Complaint, including any
9 Motion to Dismiss, on or before November 1, 2021;

10 (4) Plaintiffs shall file any Opposition papers on or before November 22, 2021; and

11 (5) Defendants shall file any Reply papers on or before December 14, 2021.

12
13 **IT IS SO ORDERED.**

14
15 Dated: _____

16 Honorable Lucy H. Koh
United States District Court Judge

17
18
19
20
21
22
23
24
25
26
27
28